Perbadanan Bekalan Air Pulau Pinang Sdn Bhd v Piala Mutiara Sdn Bhd

HIGH COURT (PENANG) — COMPANY WINDING-UP NO PA-28NCC-69–09 OF 2020
WONG HOK CHONG JC
21 JUNE 2021

Companies and Corporations — Winding up — Opposition to petition — Whether judgment in default properly served on respondent — Whether judgment in default was valid — Whether respondent ought to be wound up

This was the petitioner's petition to wind up the respondent company on the ground that they were insolvent. The petitioner issued a statutory demand against the respondent company premised on a judgment of default ('JID') dated 23 June 2019 for the judgment debt of RM407,077.53 with interest thereon at the rate of 5%pa. Prior thereto, the JID had been served on the respondent at their registered and business address through the petitioner's solicitor's letter dated 23 September 2019. The respondent had not made good on the statutory demand and were deemed insolvent pursuant to s 466(1)(a) of the Companies Act 2016. The respondent opposed the petition and contended that they had not received the JID and that the debt was disputed.

Held, allowing the petition:

(1) On the point that the respondent did not receive the JID, it was a bare allegation and it had been rebutted by the petitioner. The petitioner's solicitor served the said judgment on the respondent at their registered and business address through their letter dated 23 September 2019. The letters were sent by registered post and the proof of posting by registered post were exhibited in their affidavit. Even if the JID did not reach them for any reason, there was no doubt that the respondent was fully aware of the JID at the material time. Having known that JID had been entered against them since September 2019, the respondent had not made any attempt to set aside the JID. Therefore, the JID was valid. In such circumstances, the law was clear that the judgment debt was an incontrovertible bona fide debt. The grounds for opposing the petition were wholly without merit (see paras 6–9).

[Bahasa Malaysia summary

Ini adalah petisyen pempetisyen untuk menggulung syarikat responden atas alasan bahawa mereka tidak solven. Pempetisyen mengeluarkan tuntutan statutori terhadap syarikat responden berdasarkan penghakiman ingkar ('PI')

bertarikh 23 Jun 2019 untuk hutang penghakiman RM407,077.53 dengan faedah pada kadar 5% setahun. Sebelum itu, PI telah disampaikan kepada responden di alamat berdaftar dan perniagaan mereka melalui surat peguamcara pempetisyen bertarikh 23 September 2019. Responden tidak memenuhi tuntutan statutori dan dianggap tidak solven menurut s 466(1)(a) Akta Syarikat 2016. Responden menentang petisyen tersebut dan menghujahkan bahawa mereka tidak menerima PI dan hutang tersebut dipertikaikan.

Diputuskan, membenarkan petisyen:

(1) Mengenai perkara bahawa responden tidak menerima PI, ia adalah dakwaan kosong dan ia telah disangkal oleh pempetisyen. Peguamcara pempetisyen telah menyampaikan penghakiman tersebut kepada responden di alamat berdaftar dan perniagaan mereka melalui surat mereka bertarikh 23 September 2019. Surat-surat tersebut telah disampaikan melalui pos berdaftar dan bukti pengeposan melalui pos berdaftar telah dieksbibitkan dalam afidavit mereka. Meskipun PI tidak sampai kepada mereka atas sebarang alasan, tidak ada keraguan bahawa responden menyedari sepenuhnya PI pada masa tersebut. Setelah mengetahui bahawa PI telah dimasukkan terhadap mereka sejak September 2019, responden tidak membuat sebarang percubaan untuk mengetepikan PI tersebut. Oleh itu, PI tersebut adalah sah. Dalam keadaan sedemikian, undang-undang adalah jelas bahawa hutang penghakiman adalah hutang bona fide yang tidak boleh dipertikaikan. Alasan untuk menentang petisyen tersebut adalah tanpa merit (lihat perenggan 6–9).]

Cases referred to

Sakuragawa Pump (S) Pte Ltd v Perkapalan Mesra Sdn Bhd [2007] 7 MLJ 555, HC (refd)

Tee Yam Holdings Sdn Bhd v Shanghai Capital Sdn Bhd; Tenaga Nasional Bhd (Petitioner) [2020] 5 CLJ 130, HC (refd)

Legislation referred to

Companies Act 2016 ss 465(1)(e), 466(1)(a)

Teh Chiew Yin (Ong & Manecksha) for the petitioner.
Hari Prassaad Rao a/l A Chandrasegaran (Chandra Segaran) for the respondent.

Wong Hok Chong JC:

INTRODUCTION

[1] This is the petitioner's petition to wind up the respondent company on the ground that they were insolvent. I allowed the petition and ordered that the respondent be wound up on 13 April 2021. These are the grounds for my decision.

BACKGROUND

[2] The petitioner issued a statutory demand against the respondent company on 16 March 2020. The statutory demand was premised on a judgment of default ('JID') entered on 23 June 2019 for the judgment debt of RM407,077.53 with interest thereon at the rate of 5%pa from 13 September 2019.

[3] Prior thereto, the JID had been served on the respondent at their registered and business address through the petitioner's solicitor's letter dated 23 September 2019.

[4] The respondent had not made good on the statutory demand and were deemed insolvent pursuant to para 466(1)(a) of the Companies Act 2016 ('CA'). The petitioner proceeded to file the petition to wind up the respondent company pursuant to para 465(1)(e) of the CA on 17 September 2020.

GROUNDS FOR OPPOSING PETITION

[5] The respondent opposed the petition. They say that they had not received the JID and that the debt is disputed.

[6] On the point that they had not received the JID, it is a bare allegation and it has been rebutted by the petitioner. The petitioner's solicitor served of the said judgment on the respondent at their registered and business address through their letter dated 23 September 2019. The letters were sent by registered post and the proof of posting by registered post were exhibited in their affidavit.

[7] Even if the JID did not reach them for any reason, there is no doubt that the respondent was fully aware of the JID at the material time. In their own affidavit, they admit that the court had informed them JID had been entered against them at that time.

[8] Having known that JID had been entered against them since September

2019, the respondent have not made any attempt to set aside the JID. This was even so at the hearing of the petition — almost one year and seven months after the JID was entered.

WITHOUT MERIT

[9] The JID is valid and there has been no attempt to set it aside. In such circumstances, the law is clear that the judgment debt is an incontrovertible bona fide debt. The grounds for opposing the petition is wholly without merit.

LAW

[10] In *Sakuragawa Pump (S) Pte Ltd v Perkapalan Mesra Sdn Bhd* [2007] 7 MLJ 555, the High Court held as follows:

> [11] On the facts of this case, the petitioner cannot be said to be making a claim on a disputed debt. In this case, the petitioner holds a final judgment from a court of competent jurisdiction which till date has not been set aside or there is no credible evidence to show that the respondent had made prompt attempt to contest the judgment in Singapore or set aside the registration of the said judgment. Generally, creditor's petition for winding up is only presented upon judgment having been obtained. A judgment in default for all purposes can be said to be a final judgment. unless there is an application to set aside the judgment and/or there is an appeal in respect of the application. In *Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd* [1991] 1 MLJ 100, it was stated that a petition for winding up can be presented based on a judgment in default. even if the default judgment is irregular. The default judgment is good and enforceable until it is set aside. However. it must be emphasised that a default judgment cannot be treated as a final judgment when there is an appeal pending and/or an application for it to be side aside (see *Re Udos ak Riging* [1994] 3 MLJ 383) provided the said application is not only made promptly, but the applicant can demonstrate to the court that all attempts to expedite the hearing of the applicant has been made. This is to ensure that the applicant is not attempting to delay the winding up proceedings, the proceedings of which need to be expeditiously dealt with.

[11] In *Tee Yam Holdings Sdn Bhd v Shanghai Capital Sdn Bhd; Tenaga Nasional Bhd (Petitioner)* [2020] 5 CLJ 130, the High Court held as follows:

> Merits on the court's judgment
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> [43] As indicated the respondent and applicant argued there is also no debt owed by the respondent to the petitioner and the property had been sold off at all material time and the respondent was not occupying the same. Hence the electricity supplied if any was never utilised by the respondent.
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> [44] These arguments basically pertain to the merits of the case at the sessions court where the judgment in default had been obtained by the petitioner. That judjment is a valid judgment which has not been set aside. It is not the function of this court to question that judgment. The contentions of the respondent and the applicant

regarding the merits of the case should have been argued at the Sessions Court. After all as explained, the suit is not an issue to the respondent and applicant as indicated in para. 10 of the respondent and applicant own affidavit in reply.

DECISION

[12] For the above reasons, I allowed the petition and ordered that the respondent company be wound up.

Petition allowed.

Reported by K Selvaraju